IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.1077 OF 2005
(For leave to appeal)

The State of Maharashtra — Appellant
vs.
Ramesh Gundappa Gavade & anr. — Respondents

Ms.U.V.Kejriwal, Addl. Public Prosecutor for the State.

CORAM : R. M. LODHA &
R. S. MOHITE,JJ.

DATED : 3rd March 2005

P.C.

Heard the learned Additional Public Prosecutor.

2. We perused the impugned judgment and the evidence from the record and proceedings.

3. The present respondents have been acquitted by the VIth Additional Sessions Judge, Sangli vide her judgment dated 31st August 2004 in Sessions Case No.142/2002. Aggrieved by the judgment of acquittal, the present criminal application for leave to appeal has been filed by the State.

4. Both the accused persons (the respondents herein) were charged for having committed murder of one Bhupal Maruti Bhanuse. They were also charged of having caused disappearance of his dead body with the knowledge and

intention of screening the real offender from punishment. Thus they faced trial for the offences punishable under Sections 302, 201 r/w 34 IPC. For want of any direct evidence, the prosecution sought to prove the charge against the accused persons by means of circumstantial evidence. The prosecution highlighted the circumstances viz., (one) last seen (two) injury on the person of accused no.1 (three) recovery of weapon (Jambiya), chappals and bicycle at the instance of accused-Ramesh Gundappa Gavade (A1) and (four) motive.

5. According to the prosecution case Bhupal was murdered on 25.08.2002 in between 22 to 22.30 hours in the agricultural land of Tatoba Maishale, Malegaon.

6. For the first time the report that Bhupal was missing was lodged on 06.06.2002 by his mother. On 21.06.2002 the human bones and clothes were found in the field of one Kupwade and police patil was informed accordingly. The police patil registered A.D. case no.51/2002 under Section 174 of Code of Criminal Procedure. During investigation, the statement of respondent no.2 herein-Mahadev Satyappa Dhavale (A2) was recorded. His statement revealed the murder of Bhupal and based on that the First Information Report was lodged on 25.06.2002 vide C.R. No.87/2002 by Miraj Rural Police Station.

7. The prosecution examined Sunil Nabhu Bhanuse (PW-10) to establish that the deceased was last seen with the accused on 28.05.2002. His evidence has been disbelieved by the learned trial Judge. We find no justifiable reason to take a different view. He is interested witness being cousin of the deceased Bhupal. According to him on 28.05.2002 at about 8.30 p.m. Bhupal came to his house for attending kanduri dinner at the house of Raosaheb Bhanuse. Both of them went for dinner and returned by 9.30 p.m. On their return both the accused persons came to the house on their bicycle. A1 called the deceased and offered him water tank needed by him. Bhupal then left the house of PW-10 along with accused persons. Next morning Bhupal's mother came to his house and asked about the Bhupal. He told her that last night after return from dinner Bhupal had gone along with the accused persons. We find that PW-10 has not been able to withstand cross-examination. About the relationship between Bhupal and the accused persons there is contradiction. He had no idea about the missing report lodged by Bhupal's mother. He did not go to police station on his own. He did not meet A1 after the incident. Though he was not able to remember his own clothes which he wore on 25.08.2002, he remembered Bhupal's clothes. The evidence of PW-10 does not stand the test of total trust worthiness. The last seen

evidence, thus, falls flat on the ground.

8. As regards the injury said to have been sustained by A1 during the incident, the prosecution has not been able to rule out the possibility that the said injury could have been caused to him by Jambiya which he used to keep for cutting the leaves for the goats. Dr.Mahadev Dnyanoba Mali (PW-6) who was examined by the prosecution did opine that it was possible that injuries sustained by accused no.1 could have been caused by Jambiya. This circumstance also does not carry the case of prosecution further.

9. As regards the recovery of jambiya, chappals and bicycle, suffice it to say that even if this circumstance is taken as it is, this by itself is not sufficient to bring home the guilt of accused no.1. Besides the prosecution failed to send the said clothes, chappals etc. which are said to have been recovered at the instance of A1 for chemical Analysis. The bones that were recovered could not be proved to be of deceased Bhupal by reliable evidence. As a matter of fact the prosecution miserably failed to establish the identity of bones.

10. The evidence relating to motive is too weak and rightly not accepted by the learned trial Judge.

11. All in all, we find that the appreciation of the evidence by the learned trial Judge does not suffer from any legal infirmity. The view of the trial Court on the basis of the evidence on record seems to us to be possible view.

12. In the circumstances, no case for grant of leave is made out.

13. Criminal application for leave to appeal is rejected accordingly.

(R.M. LODHA,J.)

(R.S. MOHITE,J.)